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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE PACIFIC FERTILITY CENTER  
LITIGATION

This Document Relates to:  
No. 3:18-cv-01586  
(A.B., C.D., E.F., G.H., and I.J.)

Case No. 3:18-cv-01586-JSC

**PLAINTIFFS' PROPOSED SPECIAL  
VERDICT FORM**

Pretrial Hearing: April 29, 2021  
Time: 2:00 p.m.  
Judge: Hon. Jacqueline Scott Corley  
Place: Courtroom F, 15th Floor

Trial Date: May 20, 2021

We answer the questions submitted to us as follows:

**I. MANUFACTURING DEFECT<sup>1</sup>**

1. Did Tank 4 contain a manufacturing defect when it left Chart's possession?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 1 is yes, answer question 2. If you answered no, do not answer question 2 and go to question 3.*

2. Was the manufacturing defect a substantial factor in causing harm to plaintiffs?

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

*Proceed to the next question.*

**II. DESIGN DEFECT<sup>2</sup>**

3. Did Tank 4 fail to perform as safely as an ordinary user of cryogenic storage tanks would have expected when used or misused in an intended or reasonably foreseeable way?

\_\_\_\_ Yes \_\_\_\_ No

*Regardless of your answer to question 3, answer question 4.*

<sup>1</sup> CACI VF-1200. Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue

<sup>2</sup> CACI VF-1201. Strict Products Liability—Design Defect

4. Did the benefits of the tank's design outweigh the risks of the design?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 3 is yes **or** your answer to question 4 is no, then answer question 5. If you answered no to question 3 **and** yes to question 4, skip to question 6.*

5. Was the tank's design a substantial factor in causing harm to plaintiffs?

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

*Proceed to the next question.*

### III. NEGLIGENCE FAILURE TO RECALL OR RETROFIT<sup>3</sup>

6. Did Chart know or should it reasonably have known that Tank 4's controller was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 6 is yes, then answer question 7. If you answered no, do not answer questions 7 - 10 and go to question 11.*

<sup>3</sup> Based on CACI 1223. Negligence—Recall/Retrofit and modeled after VF-1205. Products Liability—Negligent Failure to Warn

7. Did Chart become aware of this defect after the tank was sold?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 7 is yes, then answer question 8. If you answered no, do not answer questions 8 - 10 and go to question 11.*

8. Did Chart fail to recall or retrofit the tank's controller?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 8 is yes, then answer question 9. If you answered no, do not answer questions 9 - 10 and go to question 11.*

9. Would a reasonable manufacturer under the same or similar circumstances have recalled or retrofitted the tank's controller?

\_\_\_\_ Yes \_\_\_\_ No

*If your answer to question 9 is yes, then answer question 10. If you answered no, do not answer question 10 and go to question 11.*

10. Was Chart's failure to recall or retrofit the tank's controller a substantial factor in causing harm to plaintiffs?

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_: \_\_\_\_ Yes \_\_\_\_ No

*If you answered yes to any of questions 2, 5, or 10, then answer question 11. If you answered no or did not answer questions 2, 5, and 10, stop here, answer no further questions, and have the presiding juror sign and date this form.*

**IV. MISUSE**

11. Was Tank 4 misused after it left Chart's possession in a way that was so highly extraordinary that it was not reasonably foreseeable to Chart?

\_\_\_\_ Yes \_\_\_\_ No

*If you answered yes to question 11, then answer question 12. If you answered no, skip question 12 and go to question 13.*

12. Was the misuse the sole cause of Plaintiff's harm?

\_\_\_\_ Yes \_\_\_\_ No

*If you answered no to question 12, then answer question 13. If you answered yes, stop here, answer no further questions, and have the presiding juror sign and date this form.*

**V. COMPENSATORY DAMAGES<sup>4</sup>**

13. What are each plaintiff's damages?

\_\_\_\_:

Economic loss

Value of damaged/lost embryos: \$ \_\_\_\_\_

Medical expenses after 3/4/18: \$ \_\_\_\_\_

Noneconomic loss

\_\_\_\_ pain, suffering, and emotional distress: \$ \_\_\_\_\_

\_\_\_\_ pain, suffering, and emotional distress: \$ \_\_\_\_\_

\_\_\_\_ **TOTAL** \$ \_\_\_\_\_

\_\_\_\_:

Economic loss

<sup>4</sup> CACI VF-1200. Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue

Value of damaged/lost eggs: \$ \_\_\_\_\_

Noneconomic loss

Pain, suffering, and emotional distress: \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

:

Economic loss

Value of damaged/lost eggs: \$ \_\_\_\_\_

Noneconomic loss

Pain, suffering, and emotional distress: \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

:

Economic loss

Value of damaged/lost eggs: \$ \_\_\_\_\_

Medical expenses after 3/4/18: \$ \_\_\_\_\_

Noneconomic loss

Pain, suffering, and emotional distress: \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

*Proceed to the next question.*

## VI. APPORTIONMENT OF FAULT<sup>5</sup>

14. Was PFC negligent with respect to Tank 4?

\_\_\_\_ Yes \_\_\_\_ No

<sup>5</sup> CACI VF-1200. Strict Products Liability—Manufacturing Defect—Comparative Fault at Issue

*If your answer to question 14 is yes, then answer question 15. If you answered no, insert the number zero next to PFC's name in question 16.*

15. Was PFC's negligence a substantial factor in causing harm to the plaintiffs?

\_\_\_\_\_ Yes \_\_\_\_\_ No

*If your answer to question 15 is yes, then answer question 16. If you answered no, insert the number zero next to PFC staff's name in question 16.*

16. What percentage of responsibility for the plaintiffs' harm do you assign to:

Chart: \_\_\_\_\_ %

PFC: \_\_\_\_\_ %

**TOTAL 100 %**

*Only proceed to question 17 if you answered yes to question 10, above.*

**VII. PUNITIVE DAMAGES<sup>6</sup> (PHASE ONE)**

17. Did Chart's failure to recall or retrofit Tank 4's controller constitute malice, oppression, or fraud?

\_\_\_\_\_ Yes \_\_\_\_\_ No

*If you answered yes, then answer question 18. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.*

18. Was the conduct constituting malice, oppression, or fraud committed by one or more officers, directors, or managing agents of Chart acting on behalf of Chart?

\_\_\_\_\_ Yes \_\_\_\_\_ No

<sup>6</sup> CACI VF-3902-04. Punitive Damages

*Proceed to the next question.*

19. Did an agent or employee of Chart engage in the conduct with malice, oppression, or fraud?

\_\_\_\_ Yes \_\_\_\_ No

*If you answered yes, then answer question 20. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.*

20. Did one or more officers, directors, or managing agents of Chart authorize this conduct?

\_\_\_\_ Yes \_\_\_\_ No

*Proceed to the next question.*

21. Did one or more officers, directors, or managing agents of Chart know of this conduct and adopt or approve it after it occurred?

\_\_\_\_ Yes \_\_\_\_ No

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After this verdict form has been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.



**VIII. PUNITIVE DAMAGES<sup>7</sup> (PHASE TWO)**

We answer the question submitted to us as follows:

1. What amount of punitive damages, if any, do you award plaintiffs?

\_\_\_\_\_: \$ \_\_\_\_\_

\_\_\_\_\_: \$ \_\_\_\_\_

\_\_\_\_\_: \$ \_\_\_\_\_

\_\_\_\_\_: \$ \_\_\_\_\_

\_\_\_\_\_: \$ \_\_\_\_\_

Signed: \_\_\_\_\_

Presiding Juror

Dated: \_\_\_\_\_

After this verdict form has been signed, notify the [*clerk/bailiff/court attendant*] that you are ready to present your verdict in the courtroom.

<sup>7</sup> CACI VF-3902. Punitive Damages

1 Dated: April 15, 2021

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